

REMARKS

Claims 1 and 12-13 and 16 are pending. The amendments to claim 1 are supported in the published application at paragraph [0077] and the support for the amendments to claim 13 are found in the published application at [0049] and [0050].

Rejection under 35 USC § 112

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (Office Action Page 2)

Claim 13 has been amended to recite “further comprising” and to remove the term “major.” Furthermore, Fig. 2 of the application shows that diameters, of around 90% of the particle formulations, are 1 to 6 μm , which support the amended language.

Rejection under 35 USC § 102

Claims 1, 12-13 and 16 are rejected under 35 U.S.C. 102(a) and 102(e) as being anticipated by US 20020106461 ('461). (Office Action Page 3)

The '461 reference is different in many respects from the claimed invention and therefore cannot legally anticipate.

The '461 reference nowhere discloses a monomer ratio of lactic acid/glycolic acid of 50:50 to 75:25 as now claimed.

The '461 reference concerns drug delivery through a variety of physical means: oral [0122]; injection [0127]; nasal delivery [0135]; and other modes [0144]. However the reference does not contemplate incorporation into a macrophage. The '461 reference discloses none of 1) macrophages, 2) phagocytic activity of macrophages, and 3) facilitating of the phagocytic activity of macrophages.

The '461 reference discloses too wide a range of particle diameters for macrophages to phagocytose. [0107] of the publication discloses:

[0107] The coated drug particles of the present invention may range in size from

about 0.1 μ m average diameter, up to and including those coated particles that are about 2-3 mm in average particle size diameter.

In contrast, the advantageous effects of the claimed invention can be seen in FIGS. 3-5 as described in [0173] and [0182] of the published specification.

In light of some of the differences described, the '461 reference cannot legally anticipate the claimed invention.

It is respectfully requested that the rejection be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105.

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Customer No. 21874

Respectfully submitted,

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